NG LYE HOCK & ANOR. v. JURIAH BTE DAWOOD

[D.C.A. (Wee Chong Jin C.J.) May 13, 1980]
[Singapore — District Court Appeal No. 33 of 1979]

Land Law — Conveyance of land in fee simple — Omission to include outhouse on said land in conveyance — Whether maxim "expressio unius exclusio alterius" applies — Conveyancing and Law of Property Act (Cap. 268), s. 6(2) to (4).

Interpretation — Conveyancing — Omission to include outhouse on land in conveyance — Whether maxim "expressio unius exclusio alterius" applies — Conveyancing and Law of Property Act (Cap. 268), s. 6(2) to (4).

The present case concerned a conveyance of October 19, 1971 by which a piece of land in fee simple was conveyed to the appellants by a personal representative of the estate of one Teh binte Indain. The said conveyance included houses Nos. 81, 81B and 85 Duku Road Singapore. At the date of the conveyance, the respondent was in occupation of an outhouse, known as No. 81A Duku Road, on the land. She refused to vacate and deliver up possession of No. 81A Duku Road and the appellants commenced proceedings against her in the District Court for possession. The trial judge held that the conveyance did not operate to convey with the land the said outhouse No. 81A Duku Road. The appellants appealed.

Held, allowing the appeal: in the light of the facts of the case and the provisions of section 6(2) of the Conveyancing and Law of Property Act, it was impossible on the true construction of the conveyance to find that a contrary intention within the meaning of section 6(4) had been expressed in the conveyance that section 6 should not apply merely because the draftsman had elected to include houses expressly in the conveyance and because the appellants were at all material times aware of the existence of the outhouse.

Cases referred to:-

(1) *Hansford* v. *Jago* [1921] 1 Ch. 322.
(2) *Gregg* v. *Richards* [1926] 1 Ch. 521.

DISTRICT COURT APPEAL.

Anamah Tan (Mrs.) for the appellants.

Allan Heng Meng Seng for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: By a conveyance dated October 19, 1971 Petum binte Abidin as personal representative of the estate of Teh binte Indain conveyed to the appellants in fee simple as tenants in common in equal shares "the land and premises described in the Schedule hereto". The Schedule reads as follows: —

"All that piece or parcel of land situate in the District of Siglap in the Republic of Singapore estimated according to the Government Resurvey to contain an area of 15,872 square feet and marked on the Government Resurvey Map as Lot 2521 of Mukim XXVI being part of the land comprised in Grant No. 2 together with the houses erected thereon and known as Nos. 81, 81B and 85 Duku Road, Singapore."

At the date of the conveyance the respondent was in occupation of an outhouse, known as No. 81A, Duku Road, on the land. She refused to vacate and deliver up possession of No. 81A, Duku Road and the appellants commenced proceedings against her in the District Court for possession. The parties agreed that the sole issue to be decided was whether the conveyance operated to convey with the land the said outhouse No. 81A Duku Road. The trial judge held that it did not and on appeal I allowed the appeal and now proceed to give my reasons for allowing the appeal.

The material provisions of section 6(2) and (3) of the Conveyancing and Law of Property Act (Cap. 268) read as follows: —

"6(2). A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey with the land, houses, or other buildings, all outhouses . . . appertaining or reputed to appertain to the land, houses or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed, or any of them, or any part thereof.

6(3). This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained."

The contention of the respondent was that the general words in section 6(2) are only read into a conveyance when a contrary intention is not expressed and that a contrary intention has been expressed in the conveyance of October 19, 1971 to exclude the outhouse No. 81A Duku Road because the conveyance does expressly mention houses Nos. 81, 81B and 85 Duku Road.

In *Hansford* v. *Jago*,[1] Russell J. said at page 332: —

"But it is said that by virtue of sub-section 4 of the same section (section 6 of the Conveyancing Act, 1881 which is *in pari materia* with our section 6) the general words are only read into a conveyance when a contrary intention is not expressed and that a contrary intention is shown here because the conveyances do contain the word 'appurtenances'. I am unable to accede to that view. It is a very strong thing to say that, when a section of an Act of Parliament provides that a conveyance of land having houses or other buildings on it is to be deemed to include a large number of different matters unless a contrary intention is expressed in the conveyance, the mere fact that the draftsman has elected to include one or two of these matters expressly in the conveyance should operate as an indication of an intention that the remainder should not be included."

In *Gregg* v. *Richards*[2] the Court of Appeal had to consider the question whether or not a contrary intention had been expressed in a conveyance to exclude the operation of section 6 of the Conveyancing Act, 1881. In that case the defendant Richards, who owned a rectangular piece of ground on part of which were five houses numbered 12 to 16 fronting on to Gower Street inclusive, conveyed to the plaintiff in fee simple No. 16 Gower Street "together with the right for the owners and occupiers for the time being of the property hereby conveyed to use jointly with all other persons for the time being entitled to use the same the road or way at the back of the buildings Nos. 12 to 15 Gower Street aforesaid and the way or passage leading into Gower Street and coloured green on the said plan endorsed on these presents such owners or occupiers paying a proportionate part of the expense of keeping the said way or passage in repair . . . to hold the same subject to and with the benefit of all easements as are now subsisting in respect of the property hereby conveyed and the said adjoining property of the vendor".

The way coloured green on the plan indicated only a way of four feet wide leading from the footway entrance in Gower Street through a yard and terminating at the side of No. 16 Gower Street. Subsequently, Richards sold to another defendant, A.E.

Jonks & Catel Ltd., Nos. 12 to 15, the yard and the way leading to the yard from Gower Street, who contended that the plaintiff had only a right of access to the back of No. 16 over the way coloured green and four feet wide, and erected a fence to prevent access for vehicles from Gower Street. The plaintiff claimed that on the true construction of her conveyance, she as owner of No. 16 had a right of way for vehicles from Gower Street to the back of her premises.

The Court of Appeal, reversing Russell J. in the court below, held that the right claimed passed to the plaintiff by virtue of section 6(2) of the Conveyancing Act, 1881, there being no unequivocal "contrary intention" expressed in the deed of conveyance within the meaning of section 6(4) of the Act, sufficient to negative the passing of such right. In their judgment all the three appellate judges observed that the maxim "*expressio unius exclusio alterius*" should be regarded as not a rule of law but a canon of construction to be applied in appropriate cases. In deciding the issue before the court Pollock M.R. said at page 528: —

"I think that the right way in which to approach this conveyance is to bear in mind, as has been said in the other cases, the circumstances and facts existing at the time and what was the privilege being enjoyed, and then to remember that subsection 2 would carry in the conveyance those privileges and advantages which were at the time of the conveyance enjoyed, and finally to see whether or not it is necessary to exclude them having regard to the terms of the conveyance."

In the present case the subject-matter of the conveyance was property vested in the personal representative of the estate of a deceased which was sold in the course of administration by the personal representative to the appellants. No. 81A Duku Road is an outhouse. Section 6(2) of the Conveyancing and Law of Property Act would carry in the conveyance all outhouses which were at the time of the conveyance "occupied or enjoyed with, reputed or known as part or parcel of or appurtenant to, the land, houses or other buildings conveyed". Bearing in mind these circumstances and facts and the provisions of section 6(2) which would carry in the conveyance all outhouses enjoyed with or appurtenant to, the land houses or other buildings conveyed, it appeared to me impossible on the true construction of the conveyance to find that a contrary intention within the meaning of section 6(4) has been expressed in the conveyance that section 6 shall not apply merely because the draftsman has elected to include houses expressly in the conveyance and because the appellants were at all material times aware of the existence of the outhouse.

For these reasons the appeal was allowed.

Appeal allowed.

Solicitors: *Laycock & Ong; Yap Kim Cheng & Co.*

LEE YEW HOE v. LEE BOCK HUAT

[O.C.J. (Sinnathuray J.) September 19, 1980]
[Singapore — Suit No. 675 of 1979]

Tort — Negligence — Road accident — Breach of duty of care while making U-turn.

Damages — Leg-amputation — Criteria for assessment — Change in social and economic conditions.

In June 1978 the plaintiff while riding his motorcycle on a narrow two way road met with an accident when a lorry driven by the defendant in breach of his duty of care to the users of the said road came into the said road to make a U-turn, collided into the motorcycle and injured the plaintiff. As a result of his injury the plaintiff underwent an above knee amputation of his right leg. At the time of the accident the plaintiff was 17 years of age and was employed as a bakery assistant at $300 per month. He had been in such employment since December 1977.

Held: (1) on the evidence adduced the defendant was wholly liable for the accident;

(2) in deciding this case earlier cases were not altogether helpful because they were decided more than 10 to 15 years earlier when social and economic conditions in the country were quite different from what they are today;

(3) taking the factors mentioned above into account the plaintiff should be awarded $40,000 as general damages and $56,124 for loss of future earnings.

Cases referred to:-

(1) *Lee Song Seng* v. *Leong Hup Transport Co. & Anor.* [1975] 2 M.L.J. ii.

(2) *Liew Kwee Chin* v. *Hong Huat Timber Trading Co.* [1979] 2 M.L.J. cxxxix.

CIVIL SUIT.

R. Murugason for the plaintiff.

Joe Chellam for the defendant.

Cur. Adv. Vult.

Sinnathuray J.: On June 24, 1978, at about 4.20 p.m., the plaintiff was riding motor cycle, AU 75L, along Jalan Tiga Ratus. The road is a narrow two-way road, about 14 feet wide, and is off Changi Road. The plaintiff who had come from Upper Changi Road, after work, was on his way home to No. 231A at Jalan Tiga Ratus. According to him, he was travelling at about 30 kmh, and kept to his left, about 2 feet from the edge of the road.

An accident then occurred. Motor lorry, YB 679, driven by the defendant, came from an unnamed earth road to the right of the plaintiff and collided into the motor cycle. The front bumper of the lorry hit the off-side of the petrol tank of the motor cycle and the right leg of the plaintiff. The over-rider of the bumper damaged the seat of the motor cycle. The plaintiff was thrown to the left on to the grass verge, and the motor cycle fell on its nearside near the edge of the road.

The defendant was on that day engaged in earth works at a site close to the scene of the accident. At the material time, he had dumped earth at the entrance to the earth road. His version of the accident was that he drove out of the earth road onto Jalan Tiga Ratus to make a U-turn. The front of the lorry was almost at the centre of Jalan Tiga Ratus. It was then that he saw the motor cycle, and stopped. The motor cycle collided into the front off-side bumper of the lorry. After the collision it went on to the right of